

RICHARD PLATT

Pollock Pines, CA 95726

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Pamela Crendon
Executive Officer
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Rancho Cordova, CA 95670-6114

Dear Ms. Crendon:

Thank you for the opportunity to comment on the Rubicon Trail Draft Cleanup and Abatement Order.

I have been a member of the Rubicon Oversight Committee (ROC) since its inception. I served as Forest Service Representative for five years prior to my retirement in 2007. I currently participate in the ROC as an El Dorado County resident, concerned citizen and resource management professional. I am a Certified Rangeland Manager licensed by the State of California Board of Forestry and Fire Protection.

As a resource professional I wish to take this opportunity to commend you and your staff for issuing a draft Cleanup and Abatement Order (CAO) to El Dorado County. I fully support your findings and mitigation measures. It is time for positive action to address the many environmental issues associated with the Rubicon Trail and provide incentive to El Dorado County to take action to protect the resource and keep the trail open for all to enjoy in the future.

During my 37 year career with the Forest Service, 29 years were spent on the Pacific Ranger District, Eldorado National Forest as a Forester and Resource Officer. My duties included resource, recreation, wilderness and OHV program management in the Crystal Basin, thus my many years of involvement with the Rubicon Trail and its issues. During my tenure I have seen the “Crown Jewel” of 4x4 trails transformed. Dramatic increases in use, radical changes in behavior and lack of maintenance have resulted in unacceptable trail conditions, impacts to water quality and damage to our public lands.





The Rubicon's historical use was a family oriented four wheeling experience consisting of an appreciation of the Trail's beautiful setting coupled with the challenge of driving slightly modified jeep type vehicles to Lake Tahoe. The goal in those days was to complete the journey from Georgetown to Lake Tahoe with the least amount of impact to vehicle, trail and the environment. In contrast, the last ten years

demonstrates a trend toward year round use by highly modified, non-street legal extreme vehicles which must be trailered to the trailhead. These vehicles are designed and built to negotiate the most extreme obstacles on or off the trail, including mud and snow. This extreme use comes with an attitude that has spawned the issues relating to water quality, massive soil erosion, oil spills, human waste, vegetation loss, public safety and illegal activity. As a direct result of this change the "Crown Jewel" has become tarnished.



The designation of the Rubicon Trail as an "unmaintained county road" best describes the problem. This unmaintained status has led to years of neglect and has resulted in the deterioration of the physical, biological and social elements of the trail to the extent that closure to motorized use lurks on the horizon. These issues are well documented in the Rubicon Trail Master Plan and Draft Environmental Impact Report (RTMP/DEIR) commissioned by the County. This document describes in detail the many unmitigated impacts associated with this lack of management. After spending over \$400,000 of OHV Grant Funding, five years of study and analysis coupled with public input, the RTMP/DEIR was scrapped by the County. This action came as a major blow to those agencies, organizations and individuals who sat through meetings, participated in site visits, provided knowledgeable input and supported responsible use of the trail during this five year planning period.

Many unanswered questions exist regarding the legal status of the trail as a public road. Who legally has responsibility for the trail and its impacts? The County, who claims historical access, the Eldorado National Forest, who owns the land or possibly both.

In 1887 the County Board of Supervisors declared and recorded the Wentworth Springs Road (Rubicon Trail) as a public highway. This declaration was reaffirmed in 1989 by the County Board of Supervisors in Resolution No. 142-89 which declared the Rubicon Trail and its two identified variants to be an El Dorado County Unmaintained Road. One would expect that with action comes responsibility for protection of natural resources, adherence to environmental laws and the acceptance of liability for public safety. This doesn't seem to be the case based on the County's past performance and the issuance of a CAO.

The segments of road which cross National Forest land and predate the establishment of the Eldorado National Forest require action under RS-2477. This action is necessary to rectify issues of jurisdiction and authority under the law. This procedure for establishing legal right-of-way over Federal lands has never been processed by the County. It has been assumed that the trail occupies a 50 foot corridor, 25 feet either side of centerline, but neither the center line nor the width of corridor have been established on paper or on the ground. This lack of action complicates things even more when it comes to jurisdiction pertaining to law enforcement, establishing regulations, performing maintenance and complying with environmental law.

The most recent assessments conducted independently by your staff and the California Geological Survey accurately document the scope of the damage to the Rubicon Trail and the negative effects to water quality and other resources. Compliance with the CAO cannot be corrected by maintenance alone but will take major reconstruction of the trail. These two documents indicate many areas where massive erosion, caused by motorized use and the lack of adequate drainage has occurred. Many



trail segments are down cut to bedrock and channelized, causing water no other opportunity but to flow down the trail, which in turn causes further down cutting and sediment transport. This material ends up in lakes, ponds and streams with negative effects to aquatic resources and sensitive fisheries in Ellis Creek, Gerle Creek and the

Rubicon River. I have administered many timber harvest contracts, road construction projects and hydroelectric developments on two National Forests as a contract administrator during my employment with the Forest Service. Based on this experience I can say the resource damage on the Rubicon Trail is, without question, the worst I have witnessed on public land in my 37 year career as a resource professional. Continuing the status quo is unacceptable. County officials and the Forest Service must be held accountable for the magnitude of the problem and required to implement a strategy to assure environmental compliance and repair the many heavily eroded areas. These actions will take commitment, time and money. The CAO assures this commitment.

Surely, you will be presented with the argument that the majority of the problems associated with the Trail can be resolved by use of a volunteer work force. This belief is common among OHV users. I have always been appreciative when the public is willing to give back to their trails, but to think that all the problems with the Trail can be resolved by volunteers on weekends wielding shovels is unrealistic. Volunteers can be most effectively utilized to perform light maintenance to protect trail investments after reconstruction work is completed. Volunteers should be allowed to work on County or Forest Service approved and supervised projects only.

Case in point, there are instances in the past where unsupervised, unapproved projects have resulted in the placement of structures by volunteers without County, Forest Service or Fish and Game authorization. For example, a log stringer bridge was constructed across a stream channel with no authorization from any above mentioned agencies. These activities are a liability to the managing agency, they threaten public safety and violate CEQA, NEPA and Fish and Game regulations. When working with volunteers there is no such thing as a free lunch. The County will get out of the program what they are willing to invest in time and money to make it work.

Professional engineers know that to maintain a trail such as the Rubicon properly requires not only an experienced, trained work force, but heavy equipment such as excavators, dozers and skilled blasters. This work requires certified, licensed operators, not volunteers, to perform the major reconstruction necessary to rectify years of neglect. **If the Rubicon is to be a world class trail it will take more than a third world fix to make it right!**

Based on the preliminary work done by the Geological Survey, the County Engineers should conduct an in-depth trail survey necessary to prepare a set of detailed drawings. A trail profile based on a 14 foot wide travel-way, with designated turnouts and bypasses designed within a 50 foot wide corridor must be stipulated in a recorded easement. These drawings, with input from the Forest Service, should include specifications and details necessary to install drainage structures, bridges, turnouts, removal of hazards, tread improvements and a strategy for restoration of "put to bed" segments. Areas of the Trail deliberately damaged or altered by unlawful acts of users, including the winching of large rocks into the trail, should be identified and returned to original condition as part of the restoration process. Case in point, the Little Sluice should be returned to a condition where slightly modified street legal vehicles can once again negotiate this icon of the

Rubicon Trail. This action would eliminate the need for any bypasses (and their undue impacts to National Forest land) associated with the Little Sluice. Removing the large boulders would prevent the discharge of petroleum products resulting from overturned vehicles or the breakage of differentials and oil pans. This engineered solution in itself goes a long way to rectify many of the behavioral problems associated with the Little Sluice and other extreme play areas on the Trail such as the Soup Bowl.



Hazardous waste generated from oils and other fluids released from vehicles as a result of accidents and rollovers, is a significant threat to the environment which increases with the growing number of users. Extreme vehicles account for most accidents and rollovers. The visual presence of oil is readily apparent and its odor is significant in many sensitive areas adjacent to riparian areas. The potential for the release of these hazardous materials into the environment is greatest when extreme rock crawling is allowed. Their activities are the main contributors to hazardous fluid spills. With that said, placing limits on numbers of users and prohibiting non-street-legal vehicles is a must.



The improper disposal of human waste is a major problem associated with use on the Rubicon Trail. It has been estimated that the current use on the Rubicon produces approximately 8,000 gallons of human waste annually. [*Human Waste Removal Report, 2001 by Dan Totheroh, licensed civil engineer, was funded by OHV grant dollars. The 8,000 gallon estimate takes into account the new toilets at Loon Lake trailhead and no sanitary facilities available along most of the remaining portion of Trail*]

The Spider Lake area was temporarily closed in 2004 by the County and the Forest Service as a threat to human health for sanitation reasons. Reducing the number of people, requiring that human waste be packed out by users, and the possible construction of toilet facilities are an integral part of resolving the problem. Establishing a carrying capacity that considers sanitation issues is essential.

Restrictions on numbers and type of vehicles (non-street-legal) and the designation of dispersed camping sites are essential to reduce resource and social impacts. Establishing trail carrying capacity is one of the first steps. Motorized dispersed camping areas are very susceptible to damage from human and vehicular impacts from increased use. Users are attracted to water and riparian areas; therefore these areas are primary locations for dispersed camping on the Rubicon Trail. Large concentrations of people in dispersed camping areas are synonymous with improper human waste disposal, soil compaction, loss of vegetation, erosion, sedimentation, and a reduction in water quality. The number of vehicles allowed at one time must factor in the amount of suitable dispersed camping sites available. In addition, since these sites are all located on adjoining National Forest lands, the Forest Service needs to provide input into the establishment of this number and assure compliance with the Standards and Guidelines for semi-primitive motorized designation stipulated in the *Eldorado National Forest Land and Resource Management Plan* for these areas.

Wet season motor vehicle use is the primary cause contributing to unacceptable resource impacts, including effects to water quality and severe damage to the historic trail. The impacts caused by this use violate the *El Dorado County General Plan*, the *Eldorado National Forest Land and Resource Management Plan*, and Section 401 of the Clean Water Act (Best Management Practices).

Wet season use has caused irreparable damage in many locations and continues to be a major factor in rill and gully formation leading to down cutting, trail widening, shrub and tree root damage and the movement of tons of sediment into sensitive stream courses, rivers, ponds and lakes. Wet season use of the Rubicon Trail by motorized vehicles is unquestionably a significant impact. It is imperative that a wet season wheeled vehicle closure be implemented from Nov 1st to May 30th.



El Dorado County has the responsibility to take appropriate action required under the law by enacting a wet season closure ordinance. Enforcement of an ordinance can be augmented by the installation of a gate or placement of barriers large enough to prevent

access by extreme vehicles. History has shown that this conflict cannot be resolved by “gentleman agreements”. Law enforcement officers need to have specific laws in place; citations cannot be written based on agreements.

Many longtime Rubicon OHV enthusiasts acknowledge that they too are saddened by the environmental impacts and behavior they observe along the trail. Photos then and now of famous places along the trail tell the story. They recognize the wisdom of implementing changes that have proven successful elsewhere and that achieve the goals of protecting the land and maintaining a quality experience for the slightly modified street legal OHV user. They would rather see money and energy invested on the trail than waste it on lawyers in order to avoid obeying the law.



In support of these users it is imperative that the County enact an ordinance to restrict use of the Rubicon Trail to licensed street legal vehicles only. An inordinate amount of the problems associated with the Rubicon Trail are related to vehicle type, driver behavior and attitude. The introduction of non-street legal vehicles has increased resource and social impacts which has been well documented in the RTMP/DEIR. Impacts relating to water quality, soil erosion, oil spills, loss of vegetation, and public safety could be reduced by prohibiting non-street legal vehicles. It is time to return the Rubicon to its historic trail status which emphasizes traditional use and “Tread Lightly” principles. This area should not be allowed to develop into an extreme OHV “park” which is inappropriate on or adjacent to National Forest lands.

Management comes with a price. The work required to reconstruct, restore and manage this heavily impacted trail will be in the millions of dollars over time. That is a given. If the trail is to remain open to motorized use, funding generated by user fees and implemented through a permit system appears to be a logical solution.

Agencies responsible for recreation across the Nation are all faced with shrinking dollars compounded by increased demand. To help offset these funding shortfalls the trend is moving toward user supported programs based on permits and user fees. Desolation Wilderness is an excellent example how permits, quotas and user fees have contributed to the management of one of the heaviest visited Wilderness areas in the country. The permit and fee program is supported by the users and has been highly successful. Desolation was awarded the “National Wilderness Stewardship Award” for 2006 placing it number one in the Nation for outstanding management. This would not have been possible without user support and fees. Let’s all hope that the Rubicon Trail can someday also receive such high honors.

The time has come for change. The Rubicon Trail without question is a valued asset to El Dorado County with its rich history relating back to the Gold Rush. It has been said that the Rubicon is the birth place of family oriented 4-wheeling. The opportunity to restore both the environmental and social attributes of the trail exists now. Managing the Trail for its traditional recreation values will go a long way toward returning the Trail to a “Crown Jewel” status. El Dorado County in conjunction with the Forest Service needs to step up to the plate and take appropriate action now.

By submitting these comments I hope I have provided you information, insight and support for the protection of our forest lands and water resources, and a sustainable Rubicon Trail into the future.

Thank you for considering my comments and providing me standing in the CAO process.

Sincerely,

/s/ Richard C. Platt

RICHARD C. PLATT
Certified Rangeland Manager M47

Attachment: Fair Use Doctrine